

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-151249-11

Date:

March 20, 2012

TY:

Legend

Parent =

Sub1 =

Sub2 =

Sub3 =

Acquirer =

FSub =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This letter is in response to your letter dated December 9, 2011, supplemented by your letter dated February 7, 2012, both submitted on behalf of Parent, requesting that the Commissioner make a determination under § 1.1502-75(b)(2) of the Income Tax Regulations that Sub1, Sub2, and Sub3 (the "Subsidiaries") have joined in the making of the initial consolidated federal income tax return filed by Parent for its short taxable year starting on Date 3 and ending on Date 6 (the "Short-Year Return"). The material information submitted is summarized below.

Summary of Facts

Prior to Date 3, Parent qualified as an S corporation and Sub1 and Sub2 were Qualified Subchapter S subsidiaries of Parent.

On Date 3, Acquirer, treated as a partnership for federal income tax purposes, acquired common stock in Parent. As a result of Acquirer's acquisition of Parent stock, Parent's S status terminated and Parent became a C corporation with Sub1 and Sub2 becoming separate C corporations for federal income tax purposes. Parent filed a final Form 1120S return for Parent, Sub1, and Sub2, for the period between Date 1 and Date 2.

On Date 4, in a transaction that was not a reverse acquisition under § 1.1502-75(d)(3), Sub1 acquired all of the stock of Sub3, and FSub. Sub3 timely filed a separate short-year return for the period between Date 1 and Date 4.

Parent filed the Short-Year Return as the parent of an affiliated group including itself and the Subsidiaries (together, the "Parent Group"). (Sub3 joined in the Short-Year Return for the period between Date 5 and Date 6.) The Short-Year Return included all items of income, gain, deduction, loss, and credit for the members of the Parent Group for the period during which they were members of the group. However, the Short-Year Return did not include Form 1122 consents for the Subsidiaries or a Form 851 affiliations schedule identifying the Subsidiaries.

For taxable years subsequent to the one ending Date 6, the Parent Group filed consolidated returns including all items of income, gain, deduction, loss, and credit for the Parent Group, and which identified the Subsidiaries on the Form 851 affiliations schedule.

Representations

Parent has made the following representations:

- (a) The Parent Group timely filed the Short-Year Return.
- (b) No member of the Parent Group filed separate returns for the period such entity was included on the Short-Year Return.

Applicable Law

Section 1.1502-75(a)(1) provides, in part, that a group that did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents (in the manner provided in § 1.1502-75(b)) to the regulations under § 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's return.

With regard to a corporation's consent for a group's first consolidated year, § 1.1502-75(b)(1) provides that the consent referred to in § 1.1502-75(a)(1) shall be made by such corporation joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2).

Section 1.1502-75(h)(2) provides that if, under the provisions of § 1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, then a Form 1122 must be executed by each subsidiary. For the taxable year to which this ruling is relevant, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return. If the group submits unsigned Forms 1122 with its return, it must retain the signed originals in its records in the manner required by § 1.6001-1(e). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding year.

Section 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may, under the facts and circumstances, determine that such member has joined in the making of a consolidated return by such group. The circumstances, among others, that will be taken into account in making this

determination include: (i) whether or not the income and deductions of the member were included in the consolidated return; (ii) whether or not a separate return was filed by the member for that taxable year; and (iii) whether or not the member was included in the affiliations schedule, Form 851. If the Commissioner determines, under the facts and circumstances, that the member has joined in the making of the consolidated return, such member will be treated as if it had filed a Form 1122 for such year for purposes of § 1.1502-75(h)(2).

Ruling

Based solely on the information submitted and the representations made, we rule that for purposes of § 1.1502-75(h)(2), each of the Subsidiaries shall be treated as if it had filed a Form 1122 with the Short-Year Return, and thus each shall be treated as having joined in the making of the consolidated return for such year (§ 1.1502-75(b)(2)).

Caveat

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to each federal income tax return to which it is relevant.

Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of the letter ruling.

Pursuant to the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel
(Corporate)